

(2009) 07 KAR CK 0106
In the Karnataka High Court
Case No : Writ Appeal No. 3122 of 2005

The General Manager Karnataka Bank Limited	APPELLANT
Vs	
Sri M. Ashok Kumar represented by General Secretary Karnataka Bank Staff Association, General Secretary Karnataka Bank Staff Association and Presiding Officer Central Government Industrial Tribunal Com Labour Court	RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 33 (1), 33 (2), 33 (2) (b)

Citation : (2010) 125 FLR 20 : (2010) ILR (Kar) 303 : (2010) 1 KarLJ 371 :
(2010) 1 KCCR 421 : (2010) 3 LLJ 506

Hon'ble Judges : Ravi Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : S.N. Murthy, Associates, for the Appellant; Sheela Krishna, for R1
and S.N. Sudha, for R1 in W.P. No. 18414/99, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The short question that arises for our consideration in this appeal is whether the learned Single Judge was justified in confirming the order passed by the C.G.I.T., Bangalore, dated 3rd May, 1999, in C.R.No. 16/1990 concurring with the view taken by the C.G.I.T. with the order of dismissal passed by the appellant-employee was bad in law on account of non-obtaining of APPROVAL as required u/s 33(2)(b) of the Industrial Disputes Act, 1947.

2. The facts leading to this case are as hereunder:

The respondent-workman was working as a sub-staff in the appellant-bank. On account of his misconduct an enquiry was initiated which resulted in punishing the respondent. Challenging the order of punishment the respondent-workman preferred an appeal before the Central Government Industrial Tribunal, Bangalore and the order passed by the appellant-Bank came to be set aside by the Industrial Tribunal, in Reference No. 6/1978. Challenging the order passed by the

Industrial Tribunal the appellant-Bank filed a Writ Petition before this Court in Writ Petition No. 10175/1980 which Writ Petition came to be dismissed on 7th February, 1984. As against the same, an appeal had been preferred by the appellant in Writ Appeal No. 1970/1984 which appeal also came to be rejected on 11th October, 1984.

3. When the matter was pending before this Court in Writ Petition No. 10173/1980 on account of further misconduct committed by the respondent a fresh enquiry was initiated and in the disciplinary proceedings the services of the respondent came to be dismissed. Challenging the same, the respondent raised a reference before the C.G.I.T., Bangalore, in C.R. No. 16/1990. The Presiding Officer passed an order on 3rd May, 1999 set aside the order of dismissal; solely on the ground that without prior approval of the Tribunal as required u/s 33(2) (b) of the Industrial Disputes Act. Challenging the order of the Industrial Tribunal, CGIT, Bangalore, dated 3rd May, 1999, the appellant filed a Writ Petition No. 18414/1999. The learned Judge who heard the Writ Petition came to the conclusion that the order of dismissal passed by the appellant was without obtaining the prior approval as contemplated u/s 33(2)(b) of the I.D. Act and dismissal was bad in law. Accordingly the Writ Petition was rejected. Challenging the order passed by the learned Single Judge the appellant filed a Writ Appeal before this Court in Writ Petition No. 2623/2005. On 5th May, 2005, the appellant sought permission to file a Review Petition before the learned Single Judge. Accordingly, the Writ Appeal was withdrawn with liberty to file a Review Petition.

4. Subsequently, a Review Petition No. 389/2005 was also filed by the appellant which Petition came to be rejected on 18th July, 2005. Challenging these orders the present appeal is filed.

5. We have heard the learned Counsel appearing for the parties.

6. Sri S.N. Murthy, learned senior counsel appearing for the appellant-Bank contends that the C.G.I.T. as well as the learned Single Judge have committed a serious error in not interpreting the provisions of Section 33(2)(b) of the Industrial Disputes Act properly and on account of wrong interpretation the order of dismissal passed by the appellant-Bank has been reversed by the C.G.LT. and the same has been wrongly concurred by the learned Single Judge. Therefore, he requests the Court to set aside the order passed by the C.G.LT. as well as the order of the learned Single Judge.

7. Per contra, the learned Counsel appearing for the respondent-employee contends that; since a Writ Petition was pending before this Court when the order of dismissal was passed by the appellant, the appellant was required to obtain prior approval u/s 33(2)(b) of the Industrial Disputes Act. Therefore, she contends that the learned Single Judge has not committed any error which calls for our interference.

8. After hearing the learned Counsel appearing for the parties; the only point to be considered by us in this appeal is whether the learned Single Judge was

justified in confirming the order of C.G.I.T. on the ground that the appellant had not obtained prior approval of the Tribunal as required u/s 33(2)(b) of the Industrial Disputes Act.

9. Before appreciating the case of the parties it would be useful for us to refer to certain factual position in this appeal which is not in dispute. On an earlier occasion the appellant-Bank had imposed punishment on the respondent; by stopping the increment for the year 1973-74 for an act of misconduct; against which the respondent had taken up the matter before the C.G.I.T., in Reference No. 6/1978 and the order of punishment was set aside by the C.G.I.T. by its order dated 22-3-1980.

10. On account of further misconduct of the respondent-workman; the Bank has dismissed him from service by the order dated 11-7-1981. Therefore, the short question that arises for our consideration is; when an order of dismissal was passed on 11-7-1981, whether the Bank was required to obtain the prior approval as contemplated u/s 33(2)(b) of the I.D. Act? Section 33(2)(b) of the I.D. Act reads as hereunder:

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

On a reading of Sub-section (2) of Section 33 and its proviso we have to consider whether the appellant was required to obtain prior permission of this Court, when he had filed a Writ Petition No. 18414/1999 before this Court. The permission u/s 33(2) is required if a dispute had been pending as contemplated u/s (1) of Section 33 of the Act. Section 33(1) of the Act reads thus:

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

Save with the express permission in writing of the authority before which the proceeding is pending,

That if any proceedings before the Arbitrator or the Labour Court or the Tribunal or National Tribunal in respect of an industrial dispute is pending in such an event the prior approval as contemplated under Sub-section (1) of Section 33 is

necessary. But, in the instant case, as on the date of dismissal of the respondent no reference was pending before the Arbitrator or the Labour Court or the Industrial Tribunal or the Central Government Industrial Tribunal. On the contrary, the punishment imposed for earlier misconduct of the respondent, the Central Government Industrial Tribunal had set aside the order of punishment and which was confirmed by the learned Single Judge also in Writ Petition No. 18414/1999. However, the matter was pending before, the Division bench of this Court in Writ Appeal. Therefore, what is to be considered by us; is for the earlier misconduct the matter were to be pending before the Division Bench of this Court whether Section 33(2)(b) of the Act would apply or not? On a complete reading of Section 33(2)(b) of the I.D. Act we are of the opinion that no such permission is required to be obtained if a matter is pending in a High Court since Sub-section (1) of Section 33 of the Act does not include the High Court. In the instant case, the C.G.I.T. as well as the learned Single Judge; without considering the provisions of sub-Section 33 of the Industrial Disputes Act, solely on the ground that the appellant has failed to obtain prior approval of the Tribunal; has set aside the order of dismissal when the matter itself was not pending before any Tribunal. We cannot understand what prompted the C.G.I.T. as well as the learned Single Judge to hold that no prior approval has been obtained by the appellant as contemplated under Sub-section (2) of Section 33 of the Act. When the earlier punishment had set aside. By the tribunal and when no matter was pending before the tribunal. Therefore, we are of the opinion that the Tribunal as well as the learned Single Judge have committed an error in setting aside the order of dismissal solely; on the ground that the appellant had not obtained prior approval u/s 33(2)(b) of the I.D. Act.

11. Therefore, the Writ Appeal is allowed and the order passed by the C.G.I.T., Bangalore, In Reference No. 16/1990 dated 3rd March, 1999, which has been confirmed by the learned Single Judge in Writ Petition No. 29881/1999 c/w Writ Petition No. 18414/1991 dated 1st March, 2005, and the order passed in Review Petition No. 389/2005 dated 18-7-2005 are set aside. Since the C.G.I.T. has not considered the case of the respondent on merits of the appeal, we are of the opinion that the matter has to be remanded to the C.G.I.T. for fresh consideration in accordance with law.